

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BELNICK, INC.,	:	CIVIL ACTION NO. 1:13-CV-1298
Plaintiff & Counterclaim	:	
Defendant	:	(Chief Judge Conner)
	:	
v.	:	
	:	
TBB GLOBAL LOGISTICS, INC.,	:	
Defendant & Counterclaim	:	
Plaintiff	:	

ORDER

AND NOW, this 19th day of May, 2015, upon consideration of the thorough and comprehensive report (Doc. 97) of Chief Magistrate Judge Martin C. Carlson, recommending the court grant in part the motion (Doc. 66) for summary judgment filed by defendant and counterclaim plaintiff TBB Global Logistics, Inc. ("TBB"), to the extent that Judge Carlson opines that the tort claims asserted by plaintiff and counterclaim defendant Belnick, Inc. ("Belnick"), are preempted in their entirety by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 14501(c)(1), but recommends the court deny the balance of TBB's Rule 56 motion, and further recommends that the court deny Belnick's cross-motion for summary judgment (Doc. 62) in its entirety, wherein Judge Carlson exhaustively recounts the record evidence, identifying myriad and genuine disputes of material fact precluding the entry of summary judgment as to both parties' contractual and TBB's statutory claims, and the court noting that the parties have objected (Docs.

100, 102)¹ to the magistrate judge's report, contending respectively that the record admits of no disputed facts, and that each is entitled to judgment on their various claims in their entirety, and, following an independent review of the record, the court being in agreement with Judge Carlson's recommendations, and concluding that Belnick's tort claims are preempted as a matter of law, that genuine disputes of material fact abound with respect to each of the parties' remaining claims, and that the parties' objections are without merit and squarely addressed by the report, and determining that the evidentiary record before the court is ill suited for summary adjudication, it is hereby ORDERED that:

1. The report (Doc. 97) of Chief Magistrate Judge Martin C. Carlson is ADOPTED in its entirety.
2. The motion (Doc. 62) for summary judgment by plaintiff and counter defendant Belnick, Inc. ("Belnick"), is DENIED in its entirety.
3. The motion (Doc. 66) for summary judgment by defendant and counter plaintiff TBB Global Logistics, Inc. ("TBB"), is GRANTED to the extent the court concludes that Belnick's tort claims in Counts II through IV of its amended complaint (Doc. 45) are preempted by the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 14501(c)(1), and DENIED in all other respects.

¹ When a party objects to a magistrate judge's report and recommendation, the district court performs a *de novo* review of the contested portions of the report. See Behar v. Pa. Dep't of Trans., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). The court reviews uncontested portions of the report for "clear error on the face of the record." Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1998).

4. Entry of judgment pursuant to Paragraph 3 is DEFERRED pending final resolution of this litigation.
5. The stay of pretrial and trial deadlines imposed by order (Doc. 95) dated November 19, 2014, is hereby lifted. Both parties may file a reply brief in further support of their respective motions *in limine* (Docs. 85, 87) within fourteen (14) days of the date of this order.
6. A revised pretrial and trial scheduling order shall issue by future order of the court.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania